

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 24114 OF 2005(U)

PETITIONER:

AJMAL.T.K., T.K.ICE PLANT,
NEELIKULAM, K.S.PURAM, KARUNAGAPALLY.

BY ADV. SRI.M.P.RAMNATH

RESPONDENTS:

1. THE KERALA STATE ELECTRICITY BOARD,
VAIDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY.
2. THE DEPUTY CHIEF ENGINEER,
ANTI POWER THEFT SQUAD, KERALA STATE
ELECTRICITY BOARD, VAIDHUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.
3. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, KERALA STATE ELECTRICITY
BOARD, KARUNAGAPALLY NORTH.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 3RD RESPONDENT'S DEMAND NOTICE DATED 4.8.2004.
- EXT.P2 3RD RESPONDENT'S DEMAND NOTICE DATED 13.9.2004.
- EXT.P13 3RD RESPONDENT'S DEMAND NOTICE DATED 9.10.2004.
- EXT.P4 3RD RESPONDENT'S DEMAND NOTICE DATED 8.11.2004.
- EXT.P5 3RD RESPONDENT'S DEMAND NOTICE DATED 27.12.2004.
- EXT.P6 3RD RESPONDENT'S DEMAND NOTICE DATED 27.1.2005
- EXT.P7 3RD RESPONDENT'S DEMAND NOTICE DATED 26.2.2005.
- EXT.P8 3RD RESPONDENT'S DEMAND NOTICE DATED 26.3.2005.
- EXT.P9 3RD RESPONDENT'S DEMADN NOTICE DATED 6.4.2005.
- EXT.P10 3RD RESPONDENT'S DEMAND CUM DISCONNECTION NOTICE
DATED 19.10.2004.
- EXT.P11 2ND RESPONDENT'S COVERING LETTER DATED 19.10.2004,.
- EXT.P12 TRUE PHOTO COPY OF THE MEMORANDUM OF APPEAL
BEFORE THE 2ND RESPONDENT DATED 28.10.2004.
- EXT.P13 TR4UE PHOTOSTAT COPY OF JUDGMENT DATED 17.1.2005 IN
W.P.(C) NO. 31753/2004 OF THIS COURT.
- EXT.P14 TRUE COPY OF THE WITNESS LIST DATED 18.11.2004.
- EXT.P15 TRUE COPY OF LIST OF DOCUMENTS DATED 18.11.2004.
- EXT.P16 TRUE PHOTO COPY OF THE HEARING NOTICE DATED
23.4.2005 ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER.
- EXT.P17 TRUE PHOTO COPY OF THE ORDER IN APPEAL DATED 6.7.2005
OF THE 2ND RESPONDENT.
- EXT.P18 DEMAND NOTICE DATED 15.7.2005 FROM THE 3RD
RESPONDENT.
- EXT.P19 TRUE PHOTO COPY OF THE COMPLAINT PREFERRED BY THE
PETITIONER TO THE 3RD RESPONDENT IN RESPECT OF EXT.
P4 BILL.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN, J.

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W.P.(C) NO. 24114 OF 2005

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DATED THIS, THE 11TH DAY OF JANUARY, 2007

J U D G M E N T

Petitioner is a consumer of electricity who is conducting an ice factory. He challenges Exts. P17 and P18 as arbitrary, illegal and against the provisions of the Electricity Act, 2003.

2. According to the petitioner, the Anti Power Theft Squad inspected his premises on 8.10.2004 and alleging that theft of energy was detected, Exts.P10 and P11 were issued for recovering current charges for six months prior to the inspection, which will come to Rs.1,95,705/-. Petitioner preferred an appeal as per Ext.P12 before the second respondent challenging Exts.P10 and P11. Pending the same, when attempt for disconnection of his supply was made, he approached this Court by filing W.P.© 31753/2004. Accordingly, this Court directed the petitioner to pay Rs. 50,000/- and ordered to keep the disconnection proceedings in abeyance. Thereafter, the writ petition itself was disposed of by this Court directing the second respondent to consider and dispose of the appeal Ext.P12 preferred by the petitioner, after hearing him. Since petitioner had a case that he was not

served with a copy of the mahazar said to have been prepared by the APTS, there was also a direction in that regard also.

3. In compliance with the judgment of this Court, the second respondent considered and disposed of the appeal Ext.P12, as per his order dated 6.7.2005, Ext.P17 produced in this case. In Ext.P17, the second respondent observed that the bill under dispute is not against any theft or misuse of electricity; but it is only a short assessment bill issued for the unrecorded portion of energy issued as per the rules and hence payable by the consumer. Accordingly, the Assistant Engineer, Electrical Section was directed to issue notice of intimation in that regard to the petitioner with details of the balance amount due to be remitted without any surcharge and taking into consideration the amount remitted by the petitioner on that account. The petitioner was allowed installment facility also. On the basis of Ext.P17, the third respondent Assistant Engineer issued Ext.P18 intimation, informing the petitioner that an amount of Rs. 1,45,705/- should be remitted by him within 30 days of receipt of Ext.P18 and in default, proceedings will be taken for recovery of the above said amount including disconnection of supply to his premises. Hence petitioner challenges Exts.P17 and P18 as stated above.

4. I have heard the learned counsel Sri. Ramanath, appearing on

behalf of the petitioner as also Sri. Jose J. Matheikal, standing counsel appearing for the respondents.

5. In this case, the appellate authority relied on Section 56(2) of the Indian Electricity Act. That is a provision which prescribes the period of limitation for recovery of the amount due. The question herein is what is the amount, if any, legally due from the petitioner. Hence the said provision has no application. According to the learned counsel for the petitioner, during the relevant period, in the absence of any specific provision enabling the respondents to make any demand six months prior to the date of inspection, the demand is unauthorized. He however, fairly submits that in order to give a quietus to the dispute, the claim can be limited for a period of three months instead of six months. Learned standing counsel for the respondent was not in a position to place any provision of law justifying the demand made for a period of six months. As a matter of fact, when the meter is defective, if one phase is not properly working, the matter ought to have been referred to the Electrical Inspectorate. Confronted with this position, learned standing counsel fairly accepted the offer made by the learned counsel for the petitioner and agreed to limit the demand for a period of three months prior to the date of inspection.

6. There is no evidence in this case to show that the meter was not

recording charges for a period of six months prior to the inspection. Taking an average for the subsequent months after 13.10.2004 also, more or less the consumption appears to be the same. In the circumstances, the suggestion by the parties appears to be reasonable.

7. Accordingly, the order impugned in this writ petition, Ext.P17, is set aside. Petitioner will be billed only for a period of three months as per the average determined. Accordingly, Ext.P11 demand is reduced to 50% of the same. If the amount already paid is in excess of 50% of the amount covered by Ext.P11, the balance shall be adjusted towards future bill. Ext.P11 is modified limiting the demand to 50% of the same. Ext.P17 is set aside to the above extent. Ext. P18 also will stand quashed.

The writ petition is disposed of as above.

P .R. RAMAN,
JUDGE.

knc/-